IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3023 OF 2007

Pramod Kumar Gupta. ... Petitioner.

V/s.

Union of India and others. ... Respondents.

Ashok Singh i/b. M/s.Ace Legal Consultants
for the petitioner.

Y.S.Bhate with Mrs.N.V.Masurkar
for the respondents.

CORAM : DR.S.RADHAKRISHNAN and V.C.DAGA, JJ.

DATED : 25th April 2007.

P.C. :

. Heard learned counsel for the petitioner and learned counsel for the respondents.

2. Rule. Rule made returnable forthwith by consent of parties.

3. By this petition, the petitioner has challenged the order dated 31st August, 2006 passed by the Customs, Excise and Service Tax Appellate Tribunal, Mumbai ("CESTAT" for short), whereby the CESTAT declined to entertain the appeal filed by the petitioner on the ground of limitation and refused to condone delay.

4. We have perused the application seeking condonation of delay of 45 days; wherein the petitioner has categorically stated as under:

> "The Manager of the firm kept the file with himself and did not send the same to the office of counsel at Mumbai. The said Manager in the meantime left the office without intimating as to whether the appeal has been filed or not"

In view of the fact stated hereinabove, the delay of 45 days in filing appeal ought to have been condoned by the CESTAT. We, therefore, quash and set aside the order dated 31st August, 2006 and restore the appeal to the file of CESTAT. Appeal be heard strictly on its own merits.

5. Rule is made absolute in terms of this order.

(V.C.DAGA, J.) **(DR.S.RADHAKRISHNAN, J.)**